

## **REGULAR MONTHLY MEETING OF BERKELEY COUNTY COUNCIL**

**November 23, 2009**

The **Regular Monthly Meeting of Berkeley County Council** was held on Monday, **November 23, 2009**, at 6:39 p.m., in the Assembly Room of the Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina.

PRESENT: Mr. Daniel W. Davis, Supervisor, Chairman; Mr. Phillip Farley, Council Member District No. 1; Mr. Timothy J. Callanan, Council Member District No. 2; Mr. Robert O. Call, Jr., Council Member District No. 3; Mrs. Cathy S. Davis, Council Member District No. 4; Mr. Dennis L. Fish, Council Member District No. 5; Mr. Jack H. Schurlknight, Council Member District No. 6; Mr. Steve C. Davis, Council Member District No. 8; Mrs. Nicole Scott Ewing, County Attorney; and Ms. Barbara B. Austin, Clerk of County Council. Mr. Caldwell Pinckney, Jr., Council Member District No. 7, Vice Chairman, was excused from this meeting.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

### **CALL TO ORDER**

Chairman Daniel Davis called the meeting to order.

### **APPROVAL OF MINUTES**

Chairman Daniel Davis asked for approval of minutes from a Special Meeting of Council held October 12, 2009; Public Hearings for Bills Numbered 09-30, 09-38, 09-40, 09-44 and Goodwill Industries of Lower South Carolina, and a Regular Meeting of Council held October 26, 2009.

It was moved by Council Member Farley and seconded by Council Member Schurlknight to **approve** the **minutes** as presented. The motion passed by unanimous voice vote of Council.

### **PUBLIC DISCUSSION** – none

### **EXECUTIVE SESSION** – none

### **CHAIRMAN OF COUNTY COUNCIL**

### **THIRD READING**

**“BILL NO. 09-26, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, IN REGARD TO A RECLASSIFICATION OF APPROVED USES FOR TMS #263-00-01-013.”**  
*(Tommy Boals)*

It was moved by Council Member Steve Davis and seconded by Council Member Schurlknight to **approve Bill No. 09-26 for Third Reading.** The motion passed by unanimous voice vote of Council. (A copy of Ordinance No. 09-11-53 is attached to these minutes.)

**“BILL NO. 09-40, AN ORDINANCE TO AMEND ORDINANCE NO. 97-04-18 TO ALLOW FOR CHANGES IN THE PREFERENCE THAT IS GIVEN TO BERKELEY COUNTY AND SOUTH CAROLINA BUSINESSES IN THE AWARDING OF COUNTY CONTRACTS.”**

It was moved by Council Member Schurlknight and seconded by Council Member Callanan to **approve Bill No. 09-40 for Third Reading.** The motion passed by unanimous voice vote of Council. (A copy of Ordinance No. 09-11-54 is attached to these minutes.)

**“BILL NO. 09-41, AN ORDINANCE TO AMEND AND CLARIFY CERTAIN SECTIONS OF ORDINANCE NO. 01-08-35, ADOPTED AUGUST 27, 2001, ZONING AND DEVELOPMENT STANDARDS ORDINANCE, “BERKELEY COUNTY ZONING ORDINANCE” AND AMENDING ORDINANCES NUMBERED 02-08-33, 02-12-58, 04-11-68, 05-03-08, 05-08-58, 06-09-63, 06-12-92 AND 07-07-43, IN REGARD TO THE PROPOSED CREATION OF AN ARTERIAL ROADS OVERLAY DISTRICT.”**

It was moved by Council Member Callanan and seconded by Council Member Fish to **approve Bill No. 09-41 for Third Reading.** The motion passed by unanimous voice vote of Council. (A copy of Ordinance No. 09-11-55 is attached to these minutes.)

**“BILL NO. 09-43, AN ORDINANCE AMENDING ORDINANCE NO. 09-07-35 PROVIDING FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, AND ENDING JUNE 30, 2010, FOR THE TALL PINES SPECIAL TAX DISTRICT REVENUES AND EXPENDITURES.”**

It was moved by Council Member Cathy Davis and seconded by Council Member Steve Davis to **approve Bill No. 09-43 for Third Reading.** The motion passed by unanimous voice vote of Council. (A copy of Ordinance No. 09-11-56 is attached to these minutes.)

**“BILL NO. 09-44, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN BERKELEY COUNTY, SOUTH CAROLINA, AND JOSEPH T. RYERSON & SON, INC.; AND MATTERS RELATING THERETO.”**

It was moved by Council Member Callanan and seconded by Council Member Fish to approve Bill No. 09-44 for Third Reading. The motion passed by unanimous voice vote of Council. (A copy of Ordinance No. 09-11-57 is attached to these minutes.)

**“BILL NO. 09-50, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, IN REGARD TO A RECLASSIFICATION OF APPROVED USES FOR TMS #257-00-00-001.”**  
*(County Council on behalf of the heirs of Mitchell Hardy)*

It was moved by Council Member Steve Davis and seconded by Council Member Schurlknight to approve Bill No. 09-50 for Third Reading. The motion passed by unanimous voice vote of Council. (A copy of Ordinance No. 09-11-58 is attached to these minutes.)

*Berkeley County Council Rules allow all bills to be given Second Reading by one motion as a collective group. Any member may object to a particular bill, and it shall be separated from the collective group and handled by a separate motion.*

## **SECOND READING**

**“BILL NO. 09-45, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, IN REGARD TO A RECLASSIFICATION OF APPROVED USES FOR TMS #123-00-02-030.”**  
*(John & Miriam Mitchum)*

**“BILL NO. 09-46, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, IN REGARD TO A RECLASSIFICATION OF APPROVED USES FOR TMS #142-04-02-048.”**  
*(Caroline Gethers)*

**“BILL NO. 09-47, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, IN REGARD TO A RECLASSIFICATION OF APPROVED USES FOR TMS #068-04-03-021.”**  
*(Norman Sanders)*

**“BILL NO. 09-48, AN ORDINANCE TO AMEND THE AGREEMENT FOR DEVELOPMENT OF A JOINT COUNTY INDUSTRIAL PARK, EXECUTED ON APRIL 24, 1995, BY AND AMONG BERKELEY COUNTY, SOUTH CAROLINA, AND WILLIAMSBURG COUNTY, SOUTH CAROLINA, PROVIDING FOR THE DEVELOPMENT OF A JOINTLY OWNED AND OPERATED INDUSTRIAL/BUSINESS PARK SO AS TO INCLUDE ADDITIONAL PROPERTY IN BOTH BERKELEY COUNTY AND WILLIAMSBURG COUNTY AS PART OF THE JOINT COUNTY INDUSTRIAL PARK AND OTHER MATTERS RELATED THERETO.”**

**“BILL NO. 09-49, AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF THE TRANSFER OF AUTHORITY FOR CONDUCTING MUNICIPAL ELECTIONS IN THE**

**CITY OF GOOSE CREEK TO THE BERKELEY COUNTY VOTER REGISTRATION AND ELECTION COMMISSION; TO DEFINE THE POWERS, DUTIES AND RESPONSIBILITIES ASSUMED BY THE BERKELEY COUNTY VOTER REGISTRATION AND ELECTION COMMISSION FOR THE CONDUCT OF MUNICIPAL ELECTIONS IN THE CITY OF GOOSE CREEK; TO PROVIDE FOR REIMBURSEMENT OF ALL COSTS AND EXPENSES INCURRED BY THE BERKELEY COUNTY VOTER REGISTRATION AND ELECTION COMMISSION IN THE CONDUCT OF SUCH MUNICIPAL ELECTIONS; AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.”**

It was moved by Council Member Farley and seconded by Council Member Schurlknight to **approve Bills Numbered 09-45, 09-46, 09-47, 09-48 and 09-49** for **Second Reading** by one motion as a collective group.

Council Member Fish questioned, “Mr. Chairman, I have a question on #5 on that (Bill No. 09-49). Does that mean that Goose Creek is moving their election to November like everybody else or does that just mean that the County is just administering the election?”

Chairman Daniel Davis responded, “I think that means that the County is administering the election, but whether they do, they can still opt to do that, but I don’t think that was included in it. We wouldn’t have control over that anyway.”

Council Member Fish responded, “Thank you; I was just kind of curious if they moved that date over to the same time.”

The motion passed by unanimous voice vote of Council.

## **FIRST READING**

Chairman Daniel Davis stated there were two bills for First Reading. *(Bills for First Reading are not discussed or voted upon. The bills are read into the record by title only and, thereafter, sent to the proper Committee for further consideration.)*

**“BILL NO. 09-51, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, IN REGARD TO A RECLASSIFICATION OF APPROVED USES FOR TMS #181-00-02-055 and #181-00-02-056.”**

*(Artamus Nichols for Nicholas Equipment)*

**“BILL NO. 09-52, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN BERKELEY COUNTY, SOUTH CAROLINA AND AMERICAN SYNTHETICS CORPORATION, LP, AND MATTERS RELATING THERETO.”**

## **RESOLUTIONS**

**“RESOLUTION PROVIDING FOR THE TRANSFER OF FUNDS IN THE 2009-2010 BERKELEY COUNTY BUDGET FOR COUNTY PURPOSES OTHER THAN AS SPECIFIED IN SAID BUDGET.”**

This proposed resolution was not necessary this night.

**“RESOLUTION PROVIDING THAT UNDER CERTAIN CONDITIONS, BERKELEY COUNTY WILL ENTER INTO AN AGREEMENT, PURSUANT TO TITLE 12, CHAPTER 44, OF THE CODE OF LAWS OF SOUTH CAROLINA WITH AMERICAN SYNTHETICS, LP.”**

It was moved by Council Member Fish and seconded by Council Member Schurlknight to **approve** the **resolution** providing for Berkeley County to enter into an agreement with American Synthetics, LP, pursuant to Title 12, Chapter 44, of the Code of Laws of SC. The motion passed by unanimous voice vote of Council. (A copy of Resolution No. 09-42 is attached to these minutes.)

**“RESOLUTION AUTHORIZING THE LAKE MARION REGIONAL WATER AGENCY TO FILE A PRE-APPLICATION WITH THE UNITED STATES DEPARTMENT OF AGRICULTURE’S RURAL DEVELOPMENT LOAN PROGRAM; AND OTHER MATTERS RELATING THERETO.”**

It was moved by Council Member Callanan and seconded by Council Member Fish to **approve** the **resolution** authorizing the Lake Marion Regional Water Agency to file a pre-application with the US Department of Agriculture Rural Development Loan Program. The motion passed by unanimous voice vote of Council. (A copy of Resolution No. 09-43 is attached to these minutes.)

## **REPORTS FROM STANDING COMMITTEES**

### **Committee on FINANCE**

**Council Member, Mr. Jack H. Schurlknight, Chairman**

Chairman Schurlknight reported that the Committee on Finance met earlier this night. All matters before the Committee were addressed on this night’s agenda.

*(That concluded Chairman Schurlknight’s report.)*

### **Committee on LAND USE**

**Council Member, Mr. Phillip Farley, Chairman**

Chairman Farley reported that the Committee on Land Use met November 9<sup>th</sup> and earlier this night. Many matters before the Committee were addressed on this night’s agenda.

**a. Mr. James Sineath, Access on Hartin Road**

Chairman Farley reported that Mr. James Sineath provided the Committee with information in regard to a Hartin Boulevard ingress and egress for a proposed commercial storage facility. No action was required.

**b. Mr. Stephen Ulery, Crowfield Little League Baseball Fields**

Chairman Farley reported that Mr. Stephen Ulery provided the Committee with information in regard to the Crowfield Little League Baseball Fields. No action was required.

*(That concluded Chairman Farley's report.)*

**Committee on PUBLIC WORKS AND PURCHASING  
Council Member, Mr. Robert O. Call, Jr., Chairman**

Chairman Call reported that the Committee on Public Works and Purchasing met November 9<sup>th</sup> and earlier this night.

**US Highway 17-A Water Main Relocation, Phase I**

On recommendation of the Committee, Chairman Call moved to **award** the construction **contract** for the US Highway 17-A Water Main Relocation, Phase I, to Chandler Construction Services, in the amount of \$858,346.00. (No second required.)

The motion passed by unanimous voice vote of Council.

*(That concluded Chairman Call's report.)*

**Committee on JUSTICE AND PUBLIC SAFETY  
Council Member, Steve C. Davis, Chairman**

No report.

**Committee on WATER AND SANITATION  
Council Member, Mr. Timothy J. Callanan, Chairman**

Chairman Callanan reported that the Committee on Water and Sanitation met November 9<sup>th</sup> and earlier this night. Several matters before the Committee were addressed on this night's agenda.

**Agreement between Berkeley County and Carolina Renewable Energy, LLC**

Chairman Callanan stated, “The recommendation for the approval of the Carolina Renewable Energy contract, I believe, there was going to be some sort of just clarification to that for existing customers. Colin (Martin) showed it to me on. . .”

Mr. Steve Hively, Director of Operations, Berkeley County Water and Sanitation (BCWS) asked, “Did you not get a copy of the revision in your package? It would be – revisions to our contract should have highlighted in yellow. I could read it if you don’t have it.”

Chairman Callanan responded, “Well, we can – this still has to go through general Council. It still has another reading after this. That is what I meant. We’ll just send it through, and then, we will worry about the revision on the next reading. OK. I just wanted to make sure it was being addressed.”

On recommendation of the Committee, Chairman Callanan moved to **approve** an **agreement** between Berkeley County and Carolina Renewable Energy, LLC. (*No second required.*)

Council Member Fish questioned, “I guess, Number 1, is that I don’t agree to all the changes he put in there, but we can address that at the next deal, right?”

Chairman Callanan responded, “Sure.”

Council Member Fish responded, “OK; thank you.”

Mrs. Nicole Scott Ewing, County Attorney, responded, “Before we move on from that topic, this is the only time it’s going to be before Council. This was not a resolution or an ordinance, so this is the motion to approve the agreement. I just wanted to clarify that.”

Chairman Callanan responded, “Oh; ok.”

Council Member Fish stated, “I respectfully request that it be put back on your (Chairman Callanan’s) agenda for further discussion.”

Chairman Callanan questioned, “We can discuss the changes here, right?”

Council Member Fish responded, “OK; Mr. Chairman, you know, we did get the adjustment, but one of my concerns was what was the market area, and he did give us an addendum showing everybody we’re working with right now, which does include Georgia, Florida, North Carolina, Tennessee, and I’m ok with that. I still have an objection to, I think, the contract is more favorable to them than it is to the County. Number 1 is, should they go out of business or they leave or whatever it is, then we are obligated to buy that building. I don’t agree with that. Maybe, you should put in the contract, should they walk away, they should take the building down.”

Mr. Hively responded, “We are not obligated to buy the building. The contract allows for us to do that if we wish to.”

Council Member Fish questioned, “But then, if they leave, then what – how do we approve the second person coming in? Would we have to go back and just assign that contract to somebody else?”

Mr. Hively responded, “If they would default, then we would have the issue with the bank and the loans and such with that; however, if someone else came back in, if they sell it, if they would sell the process to someone else, then this contract would still be binding on that next party.”

Council Member Fish stated, “And, you see, what also bothers me with that the fact is that this is like a franchise, and should they leave or go away, or something happens, right now, we are forebearing one whole year of \$50,000.00 of them to operate. We’re not going to charge them. We’re only giving them a lease of \$1.00 per year, extremely valuable and in their best interest. I understand that. But then, should somebody else take over, or they leave, and we take it over, then they want to charge us \$5,000.00 a month for franchise fee? That I don’t agree with. I think it’s too lop-sided in my mind.”

Mr. Hively responded, “Well, the franchise fee is for the technology that they have, because it’s proprietary technology. We would have to make the decision, if they would default, if we wanted to continue operating the business or just allow it to disappear.”

Chairman Callanan stated, “And the option is that we just go back to what we are doing now.”

Mr. Hively responded, “Or not. We would have to make that decision if we wanted to...”

Chairman Callanan stated, “So, the choice is we revert back to what we are doing right now, or we take over the facility and then pay them for use of their proprietary equipment.”

Mr. Hively responded, “If we would find that to be in our best interest. That is something the Council would have to decide.”

Council Chairman Daniel Davis stated, “It comes down to strictly a business decision. If they were to default, it would just be a business decision on our part as to whether we wanted to continue to bring the fats, oils and greases into the Treatment Plant, do it as we always have done it, or to operate the plant to process the FOG (fats, oils, greases).”

Council Member Schurlnknight stated, “Mr. Chairman, what you are saying is if they did default, we’d be in no worse shape than what we are today.”

Chairman Callanan responded, “Correct.”



Council Member Fish responded, “I don’t agree with that.”

Chairman Callanan stated, “Then the only time – we would have to determine that, basically, the amount or financial benefit exceeds our payment of, far exceeds our payment of that, to use that equipment, for us to decide to actually take over the facility. If we decide not to, it’s not in our best interest, then we go back to what we are doing right now.”

Mr. Hively responded, “That’s correct.”

Council Chairman Daniel Davis stated, “I would like to remind Council, the technology on all this is changing. This is green energy. This is renewable energy. It also helps get a bad product out of our sewer system, but the technology is improving, so the business models should get better over time. As cost of electricity goes up, then it certainly gets better, because it has a higher value. Again, we are under no obligation. It would strictly be a business decision if they were to default.”

Mr. Hively stated, “When we put the contract together, we put that in, so that we would have options if they would default. Then, they would be our options. In fact, it’s solely to our discretion as to whether we do or whether we don’t; but, we wanted to be able to make that choice ourselves, rather than not be able to make it.”

Council Member Fish asked, “Did they develop this contract, or did we develop this contract?”

Mr. Hively responded, “We developed this contract. Well, we wrote it originally, and then it was negotiated over about a three-month period, back and forth.”

The motion passed by majority voice vote of Council. Council Member Fish voted, “Nay”.

*(That concluded Chairman Callanan’s report.)*

**Committee on PLANNING AND DEVELOPMENT**  
**Council Member, Mrs. Cathy S. Davis, Chairman**

No report.

**Committee on COMMUNITY SERVICES**  
**Council Member, Mr. Caldwell Pinckney, Jr., Chairman**

Acting Chairman Cathy Davis reported that the Committee on Community Services met November 9<sup>th</sup>. All matters before the Committee were addressed earlier on this night’s agenda.

*(That concluded Chairman Pinckney’s report.)*

**Committee on HUMAN SERVICES**  
**Council Member, Mr. Dennis L. Fish, Chairman**

No report.

**NOMINATIONS FOR MEMBERSHIP ON BOARDS, COMMISSIONS, ETC.** – none

**CORRESPONDENCE** – none

**UNFINISHED BUSINESS** – none

**NEW BUSINESS** – none

**ANNOUNCEMENTS**

There will be a **Special Meeting of Council** to be held **Monday, December 7, 2009**. This meeting will be set up as a telephone conference call to address one item, Bill No. 09-52.

The **December 2009 Regular Meeting of Berkeley County Council** will be held on **Monday, December 14, 2009**, immediately following Public Hearings and all other Committee Meetings at **6:00 p.m.**, in the **Assembly Room** of the **Berkeley County Administration Building**, 1003 Highway 52, Moncks Corner, South Carolina.

**ADJOURNMENT**

It was moved by Council Member Schuriknight and seconded by Council Member Cathy Davis to **adjourn** the Regular Meeting of County Council. The motion passed by unanimous voice vote of Council.

Meeting adjourned at 6:58 p.m., for the execution of documents by Council.

**PUBLIC DISCUSSION** – none

S/Barbara B. Austin, CCC  
Clerk of Council

December 14, 2009  
Date Approved